

IN THE SUPREME COURT OF THE STATE OF NEVADA

T.J.'S QUIK MART,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DAVID WALL, DISTRICT JUDGE; AND
THE JUSTICE COURT OF LAS VEGAS
TOWNSHIP, AND THE HONORABLE
ANTHONY ABBATANGELO, JUSTICE
OF THE PEACE,

Respondents,


and

DURANGO TWAIN, LLC,
Real Party in Interest.

No. 44025

FILED

FEB 23 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

This original petition for a writ of certiorari challenges a justice's court's summary eviction order and order increasing rent. The real party in interest, Durango Twain, LLC, has filed an answer, to which petitioner T.J.'s Quik Mart has replied.


A writ of certiorari is available to cure jurisdictional excesses when there is no plain, speedy and adequate remedy at law, such as an appeal.¹ As T.J.'s has no appellate remedy² to cure what we conclude is an


¹NRS 34.020(2).


²See Nev. Const. art. 6, § 6 (stating that district courts have final appellate jurisdiction over cases arising in justice's courts).

authorize a justice's court to increase a tenant's rent in order to establish a security deposit. Second, "Additional Rent" refers in the lease not to monies held for security, but to such things as "real estate taxes, fees, assessments or other charges" and rental overpayments credited by Durango Twain to the next month's "Tax and Operating Expense." Further, paragraph 5.2 of the lease states that "Additional Rent" is not a component of the security deposit.

As the justice's court exceeded its jurisdiction in increasing T.J.'s rent to pay for a security deposit, we grant T.J.'s petition, and we direct the clerk of this court to issue a writ of certiorari directing the district court to reverse the justice's court's summary eviction order and order increasing T.J.'s rent.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. David Wall, District Judge
Hon. Tony Abbatangelo, Justice of the Peace
Gordon & Silver, Ltd.
David J. Winterton & Associates, Ltd.
Clark County Clerk

extra-jurisdictional act by the justice's court, this court's intervention by way of extraordinary relief is warranted.³

The eviction procedures established by NRS 40.253 are summary in nature and reach only a tenant's "default in payment of the rent."⁴ Consequently, when presented with an affidavit of complaint for summary eviction and a tenant's affidavit, the justice's court has two options: either find the tenant guilty of unlawful detainer and issue a removal order; or find that the tenant has a legal defense to unlawful detainer and require that any further proceedings occur by way of a formal action under NRS 40.290 to 40.420.⁵

Here, Durango Twain sought, and the justice's court ordered, payment of an additional security deposit. Summary eviction proceedings are not available for security deposit issues.⁶ We are not persuaded by Durango Twain's argument that the additional security deposit constitutes "Additional Rent" under the lease agreement, so as to implicate the summary eviction statute.⁷ First, NRS 40.253 does not

³See Zamarripa v. District Court, 103 Nev. 638, 640, 747 P.2d 1386, 1387 (1987) (observing that a "writ of certiorari is an extraordinary remedy and the decision to entertain a petition for a writ of certiorari lies within the discretion of this court").

⁴NRS 40.253(1).

⁵NRS 40.253(6).

⁶See NRS 40.253.

⁷In light of our conclusion that NRS 40.253 does not support the justice's court's order for a second security deposit, we need not resolve whether the justice's court exceeded its jurisdiction simply because more than \$7,500 was at stake. See NRS 4.370(g). We note, too, that the jurisdictional limit is now \$10,000.